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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/899,326 | 07/05/2001 | Carl P. Schulte | 82464RLO | 2611 |

7590 10/02/2006
Thomas H. Close
Patent Legal Staff
Eastman Kodak Company
343 State Street
Rochester, NY 14650-2201

EXAMINER

THOMPSON, JAMES A

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

2625

DATE MAILED: 10/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/899,326

Applicant(s)

SCHULTE ET AL.

Examiner

James A. Thompson

Art Unit

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 4-12.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: The drawings filed 18 May 2005 are accepted by the Examiner.

DETAILED ACTION

Response to Amendment

1. The proposed amendments filed 20 September 2006 cancel claim 1 and amend claims 6 and 7 simply to alter their respective dependencies. The proposed amendments also place the application in better form for appeal by materially reducing the issues for appeal. Thus, the **proposed amendments to the claims are entered**. As a result, claims 7-9 are now rejected under 35 USC §103(a) as being unpatentable over Stokes (US Patent 6,345,128 B1) in view of Miyazaki (US Patent Application Publication 2005/0231631 A1) and Shalit (US Patent 5,345,315), rather than Stokes in view of Miyazaki as set forth in the final rejection mailed 31 July 2006. The substance of the prior art rejections of claims 7-9 are the same as set forth in said final rejection, but the third reference (Shalit) is now considered to apply to claims 7-9 due to the new dependencies of claims 7-9.

Response to Arguments

2. Applicant's arguments filed 20 September 2006 have been fully considered but they are not persuasive.

Regarding page 4, lines 1-3: Examiner has rechecked the case file, but does not see any drawings submitted either on 16 May 2006, or with the amendment of 09 May 2006. The last drawings submitted were submitted with the amendment filed 18 May 2005, which are accepted by the Examiner.

Regarding page 5, line 1 to page 6, line 2: Applicant is arguing the Stokes (US Patent 6,345,128 B1) and Miyazaki (US Patent Application Publication 2005/0231631 A1) reference individually with respect to claim 4, and does not consider the

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combination that has been set forth in said final rejection. Applicant is respectfully reminded that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Stokes is relied upon to teach a plurality of tone scale correcting non-linear transforms, and Miyazaki is relied upon to teach a plurality of exposure correcting transforms. Miyazaki is also relied upon to teach that a user, rather than the conglomeration of psychophysical data taught by Stokes, is used to determine the particular transform [see pages 5-7 of said final rejection]. Neither Stokes nor Miyazaki are relied upon to teach producing a plurality of visual digital images on a display so that the user can correlate the difference between display and printed images. Shalit (US Patent 5,345,315) has been relied upon to teach producing a plurality of visual digital images on a display so that the user can correlate the difference between display and printed images [see pages 7-8 of said final rejection].

Regarding page 6, lines 3-12: Sufficient motivation/suggestion to combine Stokes and Miyazaki was clearly set forth on page 7, lines 7-13 of said final rejection. Applicant has not addressed this suggestion to combine, but has simply relied upon generalizations of the present specification, Stokes and Miyazaki to declare that Stokes and Miyazaki cannot be combined.

Regarding page 6, line 13 to page 7, line 10: Firstly, Shalit could certainly be used in varied user environments that include variability in lighting, printing and display characteristics since Shalit is concerned with matching a

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display and a hard copy image by correcting the tone and color reproduction curves. Different lighting, printing and display characteristics simply result in different tone and color reproduction curves that need to be matched. Additionally, Applicant does not provide any substantive reason why Shalit allegedly could not be used in varied user environments that include variability in lighting, printing and display characteristics, but merely declares it to be so.

Finally, Shalit has been relied upon to teach displaying a visual digital image on a display so that the difference between the image on the display and the printed image can be correlated, which is fully supported by the disclosure of Shalit [see page 7, lines 19-22 of said final rejection]. The manner in which Shalit has been combined with Stokes in view of Miyazaki, along with sufficient motivation/suggestion to combine the references, is also provided in said final rejection [see page 7, line 23 to page 8, line 6 of said final rejection]. Applicant is merely relying upon broad generalizations of the references, and how not addressed the specific rejections clearly set forth in said final rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Thompson whose telephone number is 571-272-7441. The examiner can normally be reached on 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David K. Moore can be reached on 571-272-7437. The fax phone number for the

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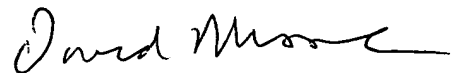
organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



25 September 2006

James A. Thompson
Examiner
Technology Division 2625



DAVID MOORE
SUPERVISORY PATENT EXAMINER
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